

SHUB LAW FIRM LLC

Jonathan Shub (SBN 237708)
Kevin Laukaitis*
134 Kings Highway E, 2nd Floor
Haddonfield, NJ 08033
T: 856-772-7200
F: 856-210-9088
jshub@shublawyers.com
klaukaitis@shublawyers.com

Attorneys for Plaintiff

KELLER & HECKMAN, LLP

ROBERT S. NIEMANN, LLC
Robert S. Niemann (SBN 87973)

Natalie E. Rainer (SBN 252456)

Natalie E. Kanner (SBN 253325)

Three Embarcadero
San Francisco, CA

T: (415) 948-2800

Email: niemann@k

Attorneys for Defendant

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JEANNE MATTHEWS, individually and on behalf of all others similarly situated,

Case No.: 3:22-cv-00497-JD

JOINT CASE MANAGEMENT STATEMENT

Hon. James Donato

Date: May 5, 2022

Time: 10:00 a.m.

Place: Courtroom 11, 19th Floor

1 The parties to the above-entitled action respectfully submit this Joint Case Management
 2 Statement pursuant to the Standing Order for All Judges of the Northern District of California and
 3 Civil Local Rule 16-9.

4 **1. Jurisdiction & Service**

5 Defendant has been served. Plaintiff is unaware of any issues concerning personal
 6 jurisdiction or venue. Plaintiff's position is that this Court has subject matter jurisdiction over this
 7 action under 28 U.S.C. § 1332(d)(2)(A). No other parties remain to be served.

8 **2. Facts**

9 **A. Plaintiff's Statement**

10 This is a consumer class action lawsuit against Defendant Morton & Bassett Spices.
 11 Plaintiff alleges that some of Defendant's spice products, including basil, ground ginger, ground
 12 thyme and ground turmeric (the "Spices") contain heavy metals, including arsenic, cadmium and
 13 lead and that Defendant misrepresented and/or failed to disclose that the Spices contain (or risk
 14 containing) such heavy metals. Specifically, a recent investigation by the well-known consumer-
 15 advocacy group Consumer Reports states that the offending herbs and spices, including the
 16 Products, "had high enough levels of arsenic, lead, and cadmium combined, on average, to pose a
 17 health concern for children when regularly consumed in typical serving sizes. Most raise concern
 18 for adult, too. Plaintiff further alleges that if Defendant had disclosed the presence (or risk) of
 19 those heavy metals in the Spices prior to purchase, Plaintiff and the members of the proposed Class
 20 would not have purchased and consumed the Spices. Plaintiff asserts the following claims: (i)
 21 violation of the Illinois Consumer Fraud Act, (ii) fraud, and (iii) unjust enrichment. Plaintiff brings
 22 her action individually and on behalf of a proposed national class and an Illinois subclass.

24 **B. Defendant's Statement**

25 In November 2021 a Consumer Reports article entitled "Your Herbs and Spices Might
 26 Contain Arsenic, Cadmium, and Lead" (available at [https://www.consumerreports.org/food-](https://www.consumerreports.org/food-safety/your-herbs-and-spices-might-contain-arsenic-cadmium-and-lead/#tests)
 27 [safety/your-herbs-and-spices-might-contain-arsenic-cadmium-and-lead/#tests](https://www.consumerreports.org/food-safety/your-herbs-and-spices-might-contain-arsenic-cadmium-and-lead/#tests)) was published,
 28 describing the results of testing for several heavy metals in various herbs and spices. Consumer
 Reports tested 126 samples, consisting of 15 types of dried herbs and spices produced by 38

1 different companies. Each sample was analyzed for arsenic, cadmium, and lead. The tests
 2 results were ranked by Consumer Reports based on an unknown methodology, and each of the
 3 126 herbs and spices tested was placed into one of four categories: “no concern”, “some
 4 concern”, “moderate concern”, and “high concern”. All but four of the Morton & Bassett
 5 products had a “no concern” result. The four that are the subject of this class action lawsuit
 6 Basil, Ground Ginger, Ground Thyme and Ground Turmeric were found to be of “some
 7 concern”.

8 The plaintiffs have not submitted their own testing or investigation in support of their
 9 complaint. The Consumer Reports article is the sole basis for plaintiff’s complaint against
 10 Morton & Bassett, as well as one other complaint filed in the Northern District of California (In
 11 re: McCormick & Company Litigation case no 5:22-cv-00349-EJD).

12 There are several questionable assumptions underlying the Consumer Report article
 13 conclusions. For example, the calculations underlying the categorizations are based in part on
 14 the assumption that individual consumers—including children—are consuming $\frac{3}{4}$ teaspoon per
 15 day of each spice, which is three times the $\frac{1}{4}$ teaspoon serving size established by the U.S. Food
 16 and Drug Administration under 21 C.F.R. 101.12. In addition, contrary to the approach taken by
 17 public health authorities in the U.S. and internationally, Consumer Reports rated the spices based
 18 on an undisclosed formula that aggregates exposures to lead, arsenic, and cadmium—compounds
 19 that pose distinct toxicity concerns which do not facilitate relative comparisons of risk based on
 20 low levels of exposure. *See* a description of Consumer Reports’ methodology at:
 21 http://article.images.consumerreports.org/prod/content/dam/surveys/Consumer_Reports_Test_Methodology_for_Herbs_Spices_November_2021.

22 Defendant’s position is that the plaintiffs lack article III standing to bring this lawsuit and
 23 have not sustained an injury in fact.

24 **3. Legal Issues**

25 **A. Plaintiff’s Statement**

26 Defendant filed a motion to dismiss on March 18, 2022. Pursuant to FRCP 15, Plaintiff
 27 intends to file an amended complaint in response to Defendant’s motion. After the pleadings are
 28 settled, Plaintiff intends to move forward towards class certification.

1 **B. Defendant's Statement**

2 Defendant filed a motion to dismiss on March 18, 2022 primarily under FRCP 12(b)1 and
3 12(b)6 for lack of jurisdiction and failure to state a claim. Plaintiffs requested to file an amended
4 complaint, and the parties agreed to May 30, 2022 for the first amended complaint (FAC) to be
5 due.

6 Defendants will review the FAC and may likely have similar grounds to renew (in good
7 faith) the motion to dismiss.

8 **4. Motions**

9 Defendant filed a motion to dismiss on March 18, 2022. Plaintiff intends to file an amended
10 complaint that will moot Defendant's motion to dismiss. No other motions have been filed.

11 **5. Amendment of Pleadings**

12 Plaintiff intends to file an amended complaint on or before May 30, 2022.

13 **6. Evidence Preservation**

14 The Parties have reviewed this District's Guidelines for the Discovery of Electronically
15 Stored Information and have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding
16 reasonable and proportionate steps necessary to preserve evidence relevant to the issues in this
17 action.

18 **7. Disclosures**

19 The parties have agreed to exchange initial disclosures on or before May 18, 2022.

20 **8. Discovery**

21 **A. Plaintiff's Statement**

22 Plaintiff intends to commence with discovery shortly. The parties agree to serve all
23 discovery requests and responses via email. Plaintiff anticipates seeking discovery regarding,
24 among other things, the following: (1) all labeling, advertising, and marketing of the Spices; (2)
25 the ingredients in the Spices; (3) all testing of the Spices; (4) all communications with consumers
26 concerning heavy metals in the Spices; (5) all communications with third-parties concerning the
27 Spices.

1 ingredients in the Spices; (6) the total sales and revenue generated from the sale of the Spices; and
 2 (7) any affirmative defense Defendant may raise.

3 **B. Defendant's Statement**

4 Defendants will serve written discovery on plaintiff Mathews, including interrogatories
 5 and request for documents. Defendants will also subpoena records from Consumer Reports to
 6 obtain any documents used in the preparation of the 2021 article. Defendants will take the
 7 deposition of plaintiff Mathews and other witnesses identified by plaintiffs in their discovery
 8 responses.

9 **9. Class Actions**

10 This action is being brought as a class action under Fed. R. Civ. P. 23. Plaintiff seeks to
 11 represent the following classes:

12 **Nationwide Class:**

13 All persons within the United States who purchased the Spices from the beginning
 14 of any applicable limitations period through the date of judgment.

15 **Illinois Subclass:**

16 All persons who purchased the Spices in the State of Illinois from the beginning of
 17 any applicable limitations period through the date of judgment.

18 The parties propose the following schedule for the class certification motion:

19 (1) Plaintiff will file her motion for class certification on January 26, 2023;
 20 (2) Defendant will file its opposition to class certification on March 16, 2023; and
 21 (3) Plaintiff will file her reply in support of class certification by April 27, 2023.

22 This proposal assumes that discovery commences promptly. If the discovery is delayed,
 23 Plaintiff may ask the Court to amend the above schedule.

24 **10. Related Cases**

25 The parties are unaware of any related cases.

26 **11. Relief**

27 Plaintiff seeks compensatory damages, restitution, disgorgement, injunctive relief, and

1 reasonable attorneys' fees, costs, and expenses.

2 **12. Settlement and ADR**

3 The parties have engaged in preliminary settlement discussions, which are ongoing. The
4 parties agree that private mediation is the appropriate form of ADR in this case if the parties are
5 unable to reach a settlement on their own.

6 **13. Consent to Magistrate Judge For All Purposes**

7 Plaintiff filed a declination to proceed before a magistrate judge on January 26, 2022.

8 **14. Other References**

9 The parties do not believe the case is suitable for reference to binding arbitration, a special
10 master, or the Judicial Panel on Multidistrict Litigation.

11 **15. Narrowing of Issues**

12 The parties are presently unaware of any stipulations or agreements that could narrow the
13 issues at this time.

14 **16. Expedited Trial Procedure**

15 The parties do not believe this case is suitable for the Expedited Trial Procedure of General
16 Order 64, Attachment A.

17 **17. Scheduling**

18 The parties respectfully submit that they will be in a better position to propose a pre-trial
19 schedule after resolution of Plaintiff's anticipated motion for class certification. The Court's
20 decision on class certification will impact other pre-trial events, such as class notice, interlocutory
21 appeals, and whether dispositive motions or trial will be directed at individual or class-wide claims.
22 Therefore, the parties propose that the Court schedule a case management conference
23 approximately 30 days after it issues an order on Plaintiff's motion for class certification and
24 require the Parties to meet and confer regarding the remainder of the pre-trial schedule at that time.

25 Should the Court wish to proceed with conventional scheduling, the parties propose the
26 following agreed-upon case schedule:

EVENT	DATE OR DEADLINE
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1	Deadline to Amend Pleadings or Add Parties	July 1, 2022
2	Deadline to File Motion for Class Certification and Supporting Expert Reports	January 26, 2023
3	Deadline to File Opposition to Class Certification Motion and Supporting Expert Reports	March 16, 2023
4	Deadline to File Reply in Support of Class Certification Motion	April 27, 2023
5	Hearing on Motion for Class Certification	May 18, 2023 at 10:00 a.m.
6	Deadline to Complete Court-Sponsored Mediation	July 14, 2023
7	Deadline to File Mediation Status Report	July 21, 2023
8	Close of Fact Discovery	July 14, 2023
9	Initial Expert Disclosures Due	July 28, 2023
10	Rebuttal Expert Disclosures Due	September 1, 2023
11	Close of Expert Discovery	September 29, 2023
12	Last Day to File Dispositive Motions (limit of one per party)	October 12, 2023
13	Hearing on Dispositive Motions	December 7, 2023
14	Final Pretrial Conference	January 18, 2024
15	Jury/Bench Trial	January 29, 2024
16	Length of Trial	7-10 court days

21 **18. Trial**

22 The parties request a jury trial. The parties anticipate that a trial in this matter would last
 23 approximately 7-10 court days.

24 **19. Disclosure of Non-party Interested Entities or Persons**

25 The parties do not believe any non-party entities or persons have an interest in this case.

26 **20. Professional Conduct**

27 Counsel for the parties reviewed the Guidelines for Professional Conduct for the Northern
 28 District of California.

21. Other Matters

The parties are not presently aware of any other matters that may facilitate the just, speedy, and inexpensive disposition of this matter.

Dated: April 28, 2022

Respectfully submitted,

SHUB LAW FIRM LLC

By: /s/ Jonathan Shub
Jonathan Shub

Jonathan Shub (SBN 237708)
Kevin Laukaitis*
134 Kings Highway E, 2nd Floor
Haddonfield, NJ 08033
T: 856-772-7200
F: 856-210-9088
jshub@shublawyers.com
klaukaitis@shublawyers.com

Attorneys for Plaintiff

Dated: April 28, 2022

KELLER & HECKMAN, LLP

By: /s/ Robert S. Niemann
Robert S. Niemann

Robert S. Niemann (SBN 87973)
Natalie E. Rainer (SBN 252456)
Three Embarcadero Center, Suite 1420
San Francisco, CA 94111
Tel: (415) 948-2800
Email: niemann@khlaw.com
Email: rainer@khlaw.com

Attorneys for Defendant